

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Pending before the Court is Defendant Mid-Century Insurance Company’s, incorrectly named as Farmers Insurance Exchange (“Defendant’s”), Motion for Summary Judgment, (ECF No. 13). Plaintiffs Andy Trong Do (“Do”), Hung V. Mai, and Hong Anh Nguyen, (collectively, “Plaintiffs”) filed a Response, (ECF No. 16), and Defendant filed a Reply, (ECF No. 17).

Also pending before the Court is Plaintiffs' Motion to Set Aside, (ECF No. 18). Defendant filed a Response, (ECF No. 19), and Plaintiffs filed a Reply, (ECF No. 22).

Also pending before the Court is Defendant's Motion to Strike the Motion to Set Aside, (ECF No. 21). Plaintiffs filed a Response, (ECF No. 24), and Defendant filed a Reply, (ECF No. 26).

For the reasons discussed below, the Court **GRANTS** the Motion for Summary Judgment and **DENIES as moot** the Motion to Set Aside¹ and Motion to Strike.

11

¹ The Motion to Strike addresses the Clerk’s Entry of Default in Case No. 2:19-cv-01800-GMN-BNW. (See Mot. Set Aside, ECF No. 18) (requesting that the Court set aside the July 13, 2020, entry of default); (See Case No. 2:19-cv-01800-GMN-BNW, ECF No. 20) (indicating Clerk’s Entry of Default in a case involving the same parties, entered 7/13/2020). Given the Motion’s irrelevance to this case, the Court would order it stricken. However, as the Court’s grant of summary judgment closes the case, and the Motion to Set Aside has no bearing on the propriety of summary judgment, the Motion to Set Aside and related Motion to Strike are denied as moot.

1 **I. BACKGROUND**

2 This case arises from Plaintiffs' attempt to collect upon a judgment entered against a
3 third-party tortfeasor who injured Plaintiffs in an automobile accident. (*See generally* Compl.,
4 Ex. 3 to Pet. Removal, ECF No. 1-3). Plaintiffs brought a personal injury lawsuit against the
5 tortfeasor in state court, the tortfeasor did not make an appearance in the case, and the court
6 entered default judgment against the tortfeasor for several million dollars. (*See* Default J.
7 Order, Ex. 2 to Pet. Removal, ECF No. 1-2). The tortfeasor did not have automobile insurance,
8 and Defendant—Do's insurer—paid Plaintiffs the full amount of the uninsured motorist
9 coverage provided under Do's insurance policy. (*See* Policy of Insurance at MIC08015, Ex. 2
10 to MSJ, ECF No. 13-2); (Sept. 13, 2019 Correspondence from Plaintiffs' Counsel, Ex. 3 to
11 MSJ, ECF No. 13-3); (Proof of Uninsured Motorist Payment, Ex. 4 to MSJ, ECF No. 13-4).
12 Plaintiffs seek to recover the balance of the judgment against the defaulting third-party
13 tortfeasor from Defendant. (*See generally* Compl., Ex. 3 to Pet. Removal, ECF No. 1-3).

14 **II. LEGAL STANDARD**

15 The Federal Rules of Civil Procedure provide for summary adjudication when the
16 pleadings, depositions, answers to interrogatories, and admissions on file, together with the
17 affidavits, if any, show that "there is no genuine dispute as to any material fact and the movant
18 is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Material facts are those that
19 may affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).
20 A dispute as to a material fact is genuine if there is sufficient evidence for a reasonable jury to
21 return a verdict for the nonmoving party. *Id.* "Summary judgment is inappropriate if
22 reasonable jurors, drawing all inferences in favor of the nonmoving party, could return a verdict
23 in the nonmoving party's favor." *Diaz v. Eagle Produce Ltd. P'ship*, 521 F.3d 1201, 1207 (9th
24 Cir. 2008) (citing *United States v. Shumway*, 199 F.3d 1093, 1103–04 (9th Cir. 1999)). A
25

1 principal purpose of summary judgment is “to isolate and dispose of factually unsupported
2 claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).

3 In determining summary judgment, a court applies a burden-shifting analysis. “When
4 the party moving for summary judgment would bear the burden of proof at trial, it must come
5 forward with evidence which would entitle it to a directed verdict if the evidence went
6 uncontested at trial. In such a case, the moving party has the initial burden of establishing
7 the absence of a genuine issue of fact on each issue material to its case.” *C.A.R. Transp.*
8 *Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (citations omitted). In
9 contrast, when the nonmoving party bears the burden of proving the claim or defense, the
10 moving party can meet its burden in two ways: (1) by presenting evidence to negate an
11 essential element of the nonmoving party’s case; or (2) by demonstrating that the nonmoving
12 party failed to make a showing sufficient to establish an element essential to that party’s case
13 on which that party will bear the burden of proof at trial. *Celotex Corp.*, 477 U.S. at 323–24. If
14 the moving party fails to meet its initial burden, summary judgment must be denied and the
15 court need not consider the nonmoving party’s evidence. *Adickes v. S.H. Kress & Co.*, 398 U.S.
16 144, 159–60 (1970).

17 If the moving party satisfies its initial burden, the burden then shifts to the opposing
18 party to establish that a genuine issue of material fact exists. *Matsushita Elec. Indus. Co. v.*
19 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute,
20 the opposing party need not establish a material issue of fact conclusively in its favor. It is
21 sufficient that “the claimed factual dispute be shown to require a jury or judge to resolve the
22 parties’ differing versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors*
23 *Ass’n*, 809 F.2d 626, 631 (9th Cir. 1987). In other words, the nonmoving party cannot avoid
24 summary judgment by relying solely on conclusory allegations that are unsupported by factual
25 data. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, the opposition must go

1 beyond the assertions and allegations of the pleadings and set forth specific facts by producing
2 competent evidence that shows a genuine issue for trial. *Celotex Corp.*, 477 U.S. at 324.

3 At summary judgment, a court's function is not to weigh the evidence and determine the
4 truth but to determine whether there is a genuine issue for trial. *Anderson*, 477 U.S. at 249. The
5 evidence of the nonmovant is "to be believed, and all justifiable inferences are to be drawn in
6 his favor." *Id.* at 255. But if the evidence of the nonmoving party is merely colorable or is not
7 significantly probative, summary judgment may be granted. *Id.* at 249–50.

8 **III. DISCUSSION**

9 The Court first addresses Defendant's Motion for Summary Judgment. Defendant
10 primarily seeks summary judgment on the ten claims raised in Plaintiffs' Complaint. (*See Mot.*
11 *Summ. J.* ("MSJ"), ECF No. 13). Ordinarily, in an order on a motion for summary judgment,
12 the Court would carefully parse the merits of each claim. But where, as here, Plaintiffs throw a
13 plethora of baseless legal theories against the wall in the hopes that one sticks, the Court need
14 not waste its valuable time cleaning up Plaintiffs' mess claim-by-claim. Instead, the Court first
15 addresses the breach of contract claim before grouping its discussion of Plaintiffs' remaining
16 claims.

17 **A. Breach of Contract**

18 After Plaintiffs' attainment of default judgment against the uninsured motorist,
19 Defendant had a contractual duty to tender the full value of the uninsured motorist policy limits
20 to Plaintiffs. (*See Policy of Insurance at MIC08015, Ex. 2 to MSJ*, ECF No. 13-2). On
21 September 18, 2019, Plaintiffs' counsel provided Defendant notice of the underlying default
22 judgment. (Sept. 13, 2019 Correspondence from Plaintiffs' Counsel, Ex. 3 to MSJ, ECF No.
23 13-3). On October 7, 2019, Defendant tendered the full value of the policy limit. (Proof of
24 Uninsured Motorist Payment, Ex. 4 to MSJ, ECF No. 13-4).

1 Plaintiffs do not contest the above-described facts. Rather, Plaintiffs' "dispute" is one of
2 law. Plaintiffs argue that by failing to intervene in the state court case, Defendant breached its
3 "duty to defend," obligating Defendant to satisfy the judgment against the uninsured motorist.
4 (See generally Pl.'s MSJ Resp., ECF No. 16). No cases support Plaintiffs' position. An insurer
5 has a duty to *defend* an insured against litigation where the insured's policy may provide
6 coverage for any prospective liability. *See Nautilus Ins. Co. v. Access Med.*, LLC, 482 P.3d 683,
7 687–88 (Nev. 2021) (explaining that the duty to defend only arises when there is possible
8 indemnification). However, there is no legal support for the position that an insurer has a duty
9 to *prosecute* a claim on an insured's behalf so that the insured may recover against a third-
10 party. Do's garden-variety automobile insurance policy is not a retainer agreement that obliged
11 Defendant to prosecute cases on Plaintiffs' behalf. Therefore, the Court grants Defendant
12 summary judgment on Plaintiffs' breach of contract claim.

13 **B. Extra-Contractual Claims²**

14 Likewise, Plaintiffs' tort and statutory claims are based on a mischaracterization of the
15 duty to defend. Plaintiffs argue that Defendant breached its duty of good faith and fair dealing
16 and related fiduciary duty by failing to properly evaluate Plaintiffs' case in determining
17 whether to intervene, even though Defendant unquestionably had no duty to intervene. (See
18 Resp. MSJ 13:5–18:2, 19:9–23:8, 24:9–15). Plaintiffs argue that Defendant acted in bad faith
19 by denying benefits despite fully performing its obligations under the contract. (*Id.* 18:3–19:8).
20 Even if Defendant owed Plaintiffs other hypothetical duties in tort, which it did not, Plaintiffs'
21 briefing of the remaining claims cites no evidence that could demonstrate breach of duty. (*Id.*

22
23

² Plaintiffs assert the following tort and statutory claims in the Complaint: (1) Breach of Implied Covenant of
24 Good Faith and Fair Dealing; (2) Violation of Nevada Unfair Claims Practices Act; (3) Breach of Fiduciary
25 Duty; (4) Civil Conspiracy; (5) Concert of Action; (6) Unjust Enrichment; (7) Conversion; (8) Intentional
Infliction of Emotional Distress; and (9) Negligent Infliction of Emotional Distress. (Compl. ¶¶ 51–115, Ex. 3 to
Pet. Removal, ECF No. 1-3).

1 24:16–29:20) (attempting to create “issues of fact” without providing any evidence to support
2 the claims). Plaintiffs’ therefore fail to satisfy their burden to defeat summary judgment.

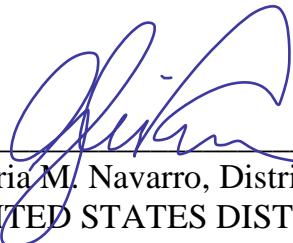
3 **IV. CONCLUSION**

4 **IT IS HEREBY ORDERED** that Defendant’s Motion for Summary Judgment, (ECF
5 No. 13), is **GRANTED**.

6 **IT IS FURTHER ORDERED** that Plaintiffs’ Motion to Set Aside, (ECF No. 18), is
7 **DENIED as moot**.

8 **IT IS FURTHER ORDERED** that Defendant’s Motion to Strike, (ECF No. 21), is
9 **DENIED as moot**.

10 Dated this 8 day of July, 2021.

11
12
13 
14

15
16
17
18
19
20
21
22
23
24
25

Gloria M. Navarro, District Judge
UNITED STATES DISTRICT COURT